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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/854,097 | 05/11/2001 | Peter C. Newman | 01-0008-1 | 7710 |

7590 10/22/2003
Albert P. Cefalo and William Cray
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Legal Dept.
170 75 Thornmint Court
San Diego, CA 92127

EXAMINER

MONBLEAU, DAVIENNE N

ART UNIT PAPER NUMBER

2878

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,097

Applicant(s)

CYMER, INC.

Examiner

Davienne Monbleau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.


- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/14/03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8. 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The IDS filed on 3/17/03 has been acknowledged and a signed copy of the PTO-1449 is attached herein.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 5, 6 and 10-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 11 and 16-27 of U.S. Patent No. 6,477,193. Although the conflicting claims are not identical, they are not patentably distinct from each other. First, determining whether a seal has broken is known in the art. Second, Oliver et al. teach in Claim 1 that the laser chamber comprises two elongated electrodes that define a discharge region and further teach in Figure 4 a first electrode support (48) which defines the discharge region having a gas flow path with a gradually increasing cross section. Oliver et al. further teach in column 4 lines 30-41 that this structure permits recovery of the pressure drop through the discharge region.

Regarding Claims 1 and 6, see '193 Claim 1.

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Regarding Claim 3, see '193 Claim 11.

Regarding Claim 5, see '193 Claim 2.

Regarding Claims 10-21, see '193 Claims 16-27 respectively.

Response to Arguments

Applicant's arguments filed 7/11/03 regarding the nonstatutory double patenting rejection for claims 1, 3, 5, 6 and 10-21 have been fully considered but are not persuasive. In particular, the Applicant argues on page 10 that Oliver et al. does not teach a "first electrode support defining a discharge region having a gas flow path with a gradually increasing cross section downstream of said first and second electrodes to permit recovery of a large percentage of the static pressure drop in the discharge region." However, Oliver et al. teach in Claim 1 that the laser chamber comprises two elongated electrodes that define a discharge region and further teach in Figure 4 a first electrode support (48) which defines the discharge region having a gas flow path with a gradually increasing cross section. Additionally, Oliver et al. teach in column 4 lines 30-41 that this structure permits recovery of the pressure drop through the discharge region. It would have been obvious to one of ordinary skill in the art to alter the shape of the discharge region to stabilize the pressure within the chamber in order to have stable laser output. Thus, the obvious non-statutory double-patenting rejection still stands.

Applicant's arguments filed 7/11/03 regarding the 103(a) rejection for claims 1-43 have been carefully considered and found persuasive. In particular, the Applicant argues on page 11 that the cited prior art of record does teach a first electrode support defining a discharge region and having a gas flow path with a gradually increasing cross section downstream of said electrodes. This enables the static pressure to be restored in the laser chamber discharge area.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davienne Monbleau whose telephone number is 703-306-5803. The examiner can normally be reached on Mon-Fri 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on 703-308-3098. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Davienne Monbleau
DNM

Paul Ip
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